

## Publications

### *Case Note: In re Estate of Kiefer & Poston v. Shelby-Love: Two New Court of Appeals Decisions Reaffirm the High Bar to Establish Undue Influence*

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The Second and Eighth District Courts of Appeals demonstrate how difficult it is to establish undue influence. In Ohio, the general test to establish undue influence is:

1. a susceptible party;
2. another's opportunity to influence the susceptible party;
3. the actual or attempted exertion of improper influence; and
4. a result showing the effect of the improper influence.

In *In re Estate of Kiefer*, the Second District Court of Appeals affirmed the trial court's decision refusing to give the jury an instruction on the presumption of undue influence based on the existence of a confidential or fiduciary relationship between the decedent and his spouse. 2017-Ohio-6997. The court stated clearly that "an undue-influence presumption does not arise based solely on the marital relationship."

The decedent's son claimed that the decedent was unduly influenced by the decedent's wife when the decedent changed his will to name his new (and fourth) wife as the primary beneficiary under his will and an assortment of non-probate assets (bank accounts, annuity, IRA, other investments). The son alleged the trial court erred in declining to instruct the jury that a presumption of undue influence arises where a fiduciary or confidential relationship exists between donor and donee. The son offered evidence that the wife had both a health care and financial power-of-attorney for the decedent. However, the court noted that both were executed at "essentially the same time" that the decedent created his will. As for a confidential relationship, the son pointed to testimony that the decedent confided in and trusted his wife, and that they made joint decisions. The Second District explained, "It makes little sense to view as suspicious a transfer between spouses in a stable marriage. If it did, a testate inheritance of every surviving spouse would be subject to a presumption of undue influence. Something more is needed. That something more ... is suspicious

circumstances.” That “something more” was lacking in the *Kiefer* case.

In *Poston v. Shelby-Love*, the decedent’s son, through his guardian, claimed that decedent was unduly influenced by the decedent’s sister when the decedent changed the beneficiary on her IRA account and the decedent’s son was not included as a beneficiary. 2017-Ohio-6980. The court considered 550 pages of medical records related to the decedent’s medical treatment in the months before she died. They did not demonstrate that the decedent was susceptible. Instead, the medical records showed the decedent was “alert and oriented at each appointment.” Upholding the trial court’s grant of summary judgment for the defendant, the Eighth District Court of Appeals concluded the plaintiff had shown “no evidence” of undue influence.

Whether you are a beneficiary, executor or administrator of an estate who has questions about the potential for a will contest on the grounds of undue influence or testamentary capacity, or are an attorney with questions about what these decisions mean for your practice and your clients, contact a Vorys attorney regarding these decisions.